

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

Oswaldo Enrique Tobar, et al.

Plaintiffs,

vs.

United States of America,

Defendant.

CASE NO. 07cv817-WQH (JLB)

ORDER DENYING PLAINTIFFS'  
MOTION FOR PROTECTIVE  
ORDERS AND MOTION TO QUASH  
NOTICES OF DEPOSITIONS

[ECF No. 147]

Before the Court is Plaintiffs' Motion for Protective Orders and Motion to Quash Notices of Depositions, which was filed on September 5, 2014. (ECF No.147.) Defendant United States filed its response and opposition papers on September 10, 2014. (ECF Nos. 148, 149.) Then, on September 15, 2014, Plaintiffs filed a certified translation of an affidavit made by Plaintiff Segundo Matias Alonzo Zambrano. (ECF No. 151.) For the reasons stated herein, Plaintiffs' Motion (ECF No. 147) is DENIED.

**BACKGROUND**

Plaintiffs, 26 Ecuadoran nationals, filed suit against the United States in this district,<sup>1</sup> claiming damages in excess of five million dollars per plaintiff. The parties have met and conferred extensively on where the depositions of the plaintiffs should take place. At one point, the United States expressed its intention to notice the

---

<sup>1</sup> The suit was initially filed in the Southern District of Texas, and then transferred here.

1 depositions of as many as eight of the plaintiffs in San Diego. Through the meet and  
 2 confer process, the United States agreed to limit the depositions it would seek to  
 3 conduct in San Diego to two: the captain of the vessel, Plaintiff Jofre Cedeno, and the  
 4 business administrator of the vessel, Plaintiff Alonzo Zambrano.<sup>2</sup>

## 5 **LEGAL STANDARD**

6 The Federal Rules of Civil Procedure require that a “party who wants to depose  
 7 a person by oral questions must give reasonable written notice to every other party  
 8 [that] must state the time and place of the deposition and, if known, the deponent’s  
 9 name and address.” Fed. R. Civ. P. 30(b)(1). The Rules also note that a court may, for  
 10 good cause, issue an order to protect a party from oppression, undue burden or expense,  
 11 including by “specifying terms, including time and place, for the disclosure or  
 12 discovery.” Fed. R. Civ. P. 26(c)(1) & (c)(1)(B).

13 A party moving for a protective order as to the place of a noticed deposition  
 14 bears the burden of showing that specific prejudice or harm will result if no protective  
 15 order is granted. *See Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d  
 16 1206, 1210-11 (9th Cir. 2002). In assessing the motion, “the court should balance the  
 17 costs and burdens to each side.” *U.S. v. \$160,066.98 from Bank of Am.*, 202 F.R.D.  
 18 624, 626 (S.D. Cal. 2001). “A district court has wide discretion to establish the time  
 19 and place of depositions.” *Hyde & Drath v. Baker*, 24 F.3d 1162, 1166 (9th Cir. 1994).

## 20 **ANALYSIS**

21 Plaintiffs have been provided two opportunities to meet their burden of  
 22 establishing, with supporting evidence, that it would be unduly burdensome for  
 23 Plaintiff Zambrano and Plaintiff Cedeno to travel to San Diego for deposition. (*See*  
 24 ECF Nos. 141, 144.) The Court directed the plaintiffs to provide specific evidence as  
 25

---

26 <sup>2</sup> The United States asserts that it “reserves the right to re-notice the other noticed  
 27 plaintiff deponents, as well as any other plaintiffs.” (ECF No. 148 at 3, n.2.) The  
 28 Court does not take a position on this claimed reservation. The only issue before the  
 Court is the Plaintiffs’ motion for a protective order and to quash the notices of  
 deposition as to Plaintiffs Cedeno and Zambrano.

1 to the burden faced by each individual plaintiff. (*See* ECF No. 144.) This was not  
2 done. The plaintiffs were also directed to address how the Court’s analysis of the  
3 appropriate location for the depositions is impacted by Defendant United States’ need  
4 to conduct an independent medical examination of at least one of those two plaintiffs.  
5 (*Id.*) Plaintiffs did not address this. Plaintiffs were also specifically ordered to include  
6 information about what steps plaintiffs had undertaken to obtain visas to travel to the  
7 United States for their depositions, and when those steps were undertaken. (*Id.*) This  
8 was not addressed.

9       The only evidence<sup>3</sup> submitted by plaintiffs was a declaration by Plaintiff Alonzo  
10 Zambrano, one of the two plaintiffs whose depositions Defendant United States seeks  
11 to take in San Diego. Without laying a proper foundation, Plaintiff Zambrano purports  
12 to offer conclusory and summary information about the financial situation of the  
13 crewmembers collectively, without addressing the specific financial situations of  
14 Plaintiff Cedeno or himself, both of whom are presumably in different financial  
15 situations than the remainder of the crew members. Significantly, Plaintiff Zambrano’s  
16 affidavit does not even address whether, and to what extent, traveling to San Diego for  
17 a deposition would impose a financial hardship on him.

18       Conversely, the United States has come forward with evidence to support its  
19 position that it would be burdensome and not an efficient use of resources for the  
20 United States to proceed with the depositions of these two plaintiffs in Panama or  
21 another location, because the United States intends to have two of its experts attend  
22 these two depositions and because the United States intends to have Plaintiff Cedeno  
23

---

24 <sup>3</sup> The court does not consider website screenshots, unaccompanied by a  
25 declaration explaining and authenticating the documentation, to be evidence. *Cf. Restis*  
26 *v. Am. Coal. Against Nuclear Iran, Inc.*, No. 13cv5032, 2014 WL 1870368, \*3  
27 (S.D.N.Y. Apr. 25, 2014) (holding: “Restis [(a foreign plaintiff)] has not submitted  
28 competent evidence to the Court, via affidavit or otherwise, establishing that he is  
unable to travel from Greece to New York for his deposition . . . . Neither the unsworn  
statements by counsel in a memorandum of law nor a memorandum of law itself is  
evidence.”).

1 submit to an Independent Medical Examination by a U.S. medical expert.

2 Thus, on balance, the depositions should go forward as noticed. Plaintiffs failed  
3 to meet their burden to present sufficient evidence of good cause to justify the relief  
4 they seek. Plaintiffs' motion for a protective order and to quash the notices of  
5 deposition is DENIED.

6 **CONCLUSION AND ORDER**

7 Plaintiffs motion for protective order and to quash notices of deposition is  
8 DENIED. Defendant United States is granted leave to re-notice these two depositions  
9 to proceed in San Diego. Any independent medical examinations of these two  
10 plaintiffs should be conducted in coordination with the depositions.<sup>4</sup> Per the offer of  
11 the United States (ECF No. 148 at 7, n.7), the United States should issue deposition  
12 subpoenas to the two plaintiffs and should draft a letter to the appropriate authorities,  
13 requesting that visas for the depositions be issued and expedited to the extent possible.

14  
15 DATED: September 25, 2014

16   
17 JILL L. BURKHARDT  
18 United States Magistrate Judge  
19  
20  
21  
22  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>4</sup> The issue of the appropriateness of the independent medical examinations is not  
before the Court. This ruling is merely addressing the fact that such examinations,  
should they be conducted, should be coordinated with the depositions.